

Document No.
COMMISSION ON INDIGENT DEFENSE
CHAPTER 70

Statutory Authority: 1976 Code Section 17-3-310, 17-3-10, 17-3-20, 17-3-45

70-10. Indigency Screening Process (New)

Preamble:

The Commission on Indigent Defense proposes to promulgate R. 70-10 addressing a uniform process to be followed by the current (as of July 1, 2019) screening entities in Aiken, Allendale, Chester, Clarendon, Florence, Horry, Laurens, Marlboro, ~~Richland~~ and Spartanburg Counties to conduct a financial review of an applicant's resources to determine if he/she is indigent and financially unable to employ counsel.

Section 17-3-310 requires the Commission to develop rules, policies, procedures, regulations, and standards regarding the criteria and process to be used in the determination of indigency and the qualifications for services for indigent legal representation.

Notice of Drafting for the proposed regulation was published in the *State Register* on June 28, 2019.

Section-by-Section Discussion

70-10 Added to provide a uniform process for screening for indigent defense services.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons are invited to submit their views in writing to Hervey B. O. Young, Deputy Director and General Counsel, SC Commission on Indigent Defense, Post Office Box 11433, Columbia, SC 29211. To be considered, comments must be received no later than September 23, 2019, close of the comment period. Should a public hearing be requested, the hearing will be held at the Commission on Indigent Defense office on November 15, 2019 at 10:00 am in the Conference Room, 1330 Lady Street, Suite 401, Columbia, SC 29201.

Preliminary Fiscal Impact Statement:

The Commission on Indigent Defense estimates the costs incurred by the State in complying with the proposed regulation will be ~~approximately \$0~~ **minimal, if any. However, data will be collected as to additional personnel/costs necessary to carry out regulation requirements.**

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: Screening Process to Determine Indigency for Court Appointed Legal Representation.

Purpose: The purpose of the regulation is to provide a uniform process to conduct indigency screening for court appointed legal representation to be followed by the current screening entities in the above 10 counties. **This proposed regulation does not change the entity that is currently conducting indigency screening. The screening entity as of July 1, 2019, shall remain the same but will implement the following screening process.** This process will provide data so the agency can track and analyze time, costs and

other issues relating to the screening process in determining the best process for conducting indigent screening.

Legal Authority: 1976 Code Sections 17-3-310, 17-3-10, 17-3-20, 17-3-45

Plan for Implementation: The regulation will take effect upon approval by the General Assembly and upon publication in the State Register. The Commission on Indigent Defense will notify the screening entities for the applicable counties of the regulation and post the regulation on the agency's website.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The proposed regulation is necessary to provide uniformity for applicants for indigent legal representation and for the determination of indigency to qualify for appointed legal representation. The regulation will ensure that services are provided to those that are indigent.

DETERMINATION OF COSTS AND BENEFITS:

Implementation of this regulation will not require additional resources. However, regular monitoring of the process will allow the State and/or County to determine if additional resources are necessary to conduct proper screening.

UNCERTAINTIES OF ESTIMATES:

None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

This regulation will have no effect on the environment and public health of this State.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

There will be no detrimental effects on the environment and public health if the regulation is not implemented in this State.

Statement of Rationale:

The SC Code of Laws provides that the Commission on Indigent Defense is responsible for establishing criteria for determining indigency. It does not explicitly state which entity is responsible for conducting the screening, only making reference is to the "clerk of court or other appropriate official". The benefit of the lack of specificity is the flexibility it allows each county to implement a solution that works best for it. However, the lack of specificity does not provide for a uniform and clear process for applicants and screening entities. This regulation is promulgated to provide a uniform screening process which can be followed by all entities conducting screening and determining the indigency status of applicants for indigent defense representation.

This regulation will also provide essential data that the agency can use in conducting a further detailed analysis of what screening issues may exist and how to best address those issues, through amendments of the current regulation, development of further regulations, statutes and/or court rules.

Text:

70-10. Indigent Screening Process

A. DEFINITIONS

1. **Applicant:** A person, with a pending case, requesting appointment of legal counsel.
2. **Case:** A case is a single charge, or a collection of related charges brought in the same court for the same initial arrest and have the same underlying conduct.
3. **Household:** The applicant, the applicant's spouse, and any child for whom the applicant has a legal obligation to provide financial support. If applicant is a minor, "Household" includes any parent of applicant or any other person required to provide financial support for applicant.
4. **Household Member:** Applicant and all other persons living in the same residence with the applicant for whom applicant is legally required to provide financial support or who are legally required to provide financial support for applicant.
5. **Household Income:** Any source of money or financial support received by any member of the applicant's household.
6. **Indigent:** A person is indigent if he is financially unable to afford to retain/employ legal counsel.
7. **Indigency:** Financial inability to afford to retain/employ legal counsel.
8. **Screening Entity:** The Clerk of Court, Bond Court Judge, or Public Defender office designated to receive and review applications and to determine eligibility for the appointment of legal counsel within the indicated counties as of July 1, 2019.

INDIGENCY STANDARD

~~A person is indigent if he is financially unable to retain/employ adequate legal counsel.~~

B. HOW TO APPLY

1. ~~In some counties, a person may apply for the appointment of legal counsel at the time he appears before the bond court judge. After release on bond or in qualifying civil proceedings, a~~ **A** person seeking indigent defense services must go to the office of the current screening entity for the county where the case is pending to apply for the appointment of counsel. The person should call either the office of the Clerk of Court or the Public Defender for the county to find out where to apply for the appointment of counsel.
2. ~~The screening entity for the county as of July 1, 2019, shall remain the same. The entity shall continue to accept the Application for Counsel and screen the applicant for indigency.~~
3. ~~2. If the person is incarcerated in the local county detention center, the Circuit Public Defender, or his designee, must visit the detention center to take the person's Affidavit of Indigency and Application for Counsel. The Circuit Public Defender must forward all applications to the screening entity's office for the determination of eligibility for the appointment of counsel. The Chief Administrative Judge, the Circuit~~

Defender, the screening entity and the detention center administrator, must develop an efficient and effective process to: (1) make the Application for Counsel available to incarcerated persons, (2) transmit the applications to the screening entity for review, and if the applicant is eligible, for appointment legal counsel, and (3) review the applicant's indigency status if released from incarceration. If a process is currently in place that assures that incarcerated persons can be screened in a timely manner, that process may continue to be followed.

~~4.3. The application and the Indigency Application Review Checklist supporting document(s) must be filed in the court's file at the Clerk of Court's office. Prior to filing, the screener must redact from any supporting document(s) the following personal identifying information: Social Security Numbers, Taxpayer identification numbers, driver's license numbers, passport numbers, financial account numbers, or any other personal identifying numbers. If a date of birth is included, only the year of birth should be included.~~

C. APPLICATION PROCESS

1. Applications for appointed counsel must be made on the current Affidavit of Indigency and Application for Counsel (Form II), as provided and approved by the South Carolina Supreme Court. The applicant must be informed that the information they provide on the application form is given under oath and under penalty of perjury, and that false information could result in penalties.

2. A person seeking indigent defense services has the burden of showing that he qualifies for indigent defense services. Appointed counsel will not be provided unless a properly completed affidavit/application is submitted, ~~with supporting documentation~~, and the screening entity determines that the person qualifies for appointed counsel.

3. The Bond Court Judge, or the Family Court Judge at detention hearings in juvenile matters, must advise a person before the court of his right to counsel and his right to the appointment of counsel if he is financially unable to employ/retain counsel, and the Court must provide to the person, in writing, the requirements to apply for the appointment of counsel. (Attachment A)

4. The applicant must personally present and sign the application ~~at the screening office. If the applicant is incarcerated, a representative of the Public Defender's office must visit the detention center to complete an application and forward the completed application to the screening entity to determine eligibility for the appointment of counsel.~~ If an Administrative Order is already in place establishing an efficient and effective method to screen and appoint legal counsel for incarcerated persons, that Order should continue in effect. In the absence of such an Order, the Circuit Defender should consult with the Chief Administrative Judge, the screening entity, and the local detention center administrator to establish an efficient and effective process to screen incarcerated applicants for appointment of legal counsel and implement that process by Order of the Chief Administrative Judge.

~~5. In juvenile matters, the parent(s) or legal guardian(s) should complete the application based upon their financial status. If the parent/guardian refuses to complete the application, is unable to complete the application because of being absent from the jurisdiction or has a conflict of interest preventing them from completing the application, the juvenile can fill out the application with the parent/guardian's information to the best of the juvenile's ability.~~

~~56.~~ Pursuant to SC Code § 17-3-45, a \$40 application fee which is due at the time an application is submitted. The applicant may apply to the court, the clerk of court, or other appropriate official for a waiver or reduction in the application fee. If it is determined that the person is unable to pay the application fee, the fee may be waived or reduced, provided that if the fee is waived or reduced, the clerk or appropriate

official must report the amount waived or reduced to the trial judge and the trial judge must order the remainder of the fee paid during probation if the person is granted probation or by a time payment method if probation is not granted or appropriate.

The application fee must be waived while the applicant is incarcerated.

~~67. Supporting Documentation~~ **Proof of Income:** The screening entity must verify the income information provided in the application. All applicants ~~should~~ **must** provide proof of the income. ~~submit documentation to support the information provided in the application.~~ One of the following supporting documentations ~~must be provided~~ **of income is required as proof** of income. **Suitable documentation for proof of income may include:**

- a. Paystubs for past 30 days.
- b. Printout of any financial or public assistance any household member is or has received within the last 12-months that may be considered income. (Food Stamps, Disability, Social Security Income, Unemployment, Retirement, etc.)
- ~~c. Printout of any child support that is either being paid or received.~~
- d. A copy of tax returns from previous year.**
- ~~e. Social Security Income report for past 12 months~~
- ~~f. Letter from current or former employer (if no longer working).~~
- ~~g. Letter from any parent, family member, friend or other person who provides any type of financial support or accommodations. The person must sign the letter and attach a copy of his/her photo identification.~~

(Example: If a person has a part-time job, is receiving Disability and receiving child support, then the person can be requested to provide copies of pay stubs, a Disability printout, and a child support printout.)

The screening entity must make a diligent effort to verify the applicant's income information by requesting that the applicant provide suitable documentation, by asking the applicant additional questions, by speaking with other persons that may be able to verify the information, or by other reasonable efforts. The screening entity is not required to conduct an extensive investigation into the information. The screening entity must sign the Indigency Application Review Checklist to indicate the efforts taken to verify the application information.

D. APPLICATION REVIEW

~~1. Review of applications for indigent defense services should be done by the screening entity for the county.~~ Review of applications should be delegated only to those persons who have received appropriate training on (1) the circumstances under which a person is entitled to appointed counsel; (2) the circumstances under which additional information is required before determining eligibility; and (3) the financial guidelines for eligibility.

~~The Screener, or someone within the screening entity's office, must be a Notary Public who can place the applicant under oath.~~ **application form should be notarized by the screening entity.**

- 2. In reviewing the application, the ~~screener~~ **screening entity** must determine the following:
 - a. The household income of the applicant.
 - b. Any applicable presumptions of indigency.
 - c. If the applicant's income, debts, assets and family situation create an exception to the person's income exceeding the poverty guidelines or if it rebuts the presumption of indigency.

~~3. Review of applications should be made within 24 hours of submission of the completed application with supporting documentation and payment of the application fee, unless waived. The applicant must be promptly notified of the decision.~~ If the decision is that the applicant is eligible, an Order Appointing the Public Defender must be filed, and a copy forwarded to the Circuit Public Defender or his designee. If the decision is that the applicant is not eligible, the ~~screener~~ **screening entity** must provide the applicant a Denial Letter and a Request for Review form. The applicant may submit a Request for Review form to have the determination reviewed by the court having jurisdiction over the case.

E. DETERMINING ELIGIBILITY

1. General Guidelines

a. The ~~screener~~ **screening entity** should use the Indigency Application Review Checklist (Attachment B) to verify ~~that all proper documentation has been submitted~~ **the information in the application** and that all necessary factors have been considered to make a determination.

b. Early appointment of counsel is desirable. Therefore, it is important that prompt determination be made as to eligibility.

~~c. Any indication of anticipatory transfer of assets by an applicant to create the conditions for eligibility for indigency should be scrutinized.~~

~~d. The initial determination of indigency is subject to review by the Court if the applicant's financial status appears to have changed substantially making the applicant no longer indigent, or if it becomes apparent that the applicant withheld or misrepresented information regarding his financial status. The appointed counsel may request the screening entity to have the person re-screened an applicant to review his/her status. No additional application fee is required. If it is determined that the applicant is no longer qualifies for services indigent, the Court must issue an order to that effect and may release counsel from the representation. However, if the Court finds that the case has progressed to the point that releasing counsel will have an extreme disruption on the flow of the court proceeding or affect the applicant's rights, the Court may order that the representation continue and assess a portion or all the cost of the representation to the applicant.~~

2. Presumption of Indigency: A presumption that a person is indigent is created if any of the following circumstances exist:

a. The applicant's net household income is less than or equal to the Poverty Guidelines established and revised annually by the United States Department of Health and Human Services and published in the Federal Register. Net income means gross income minus deductions required by law.

b. The applicant is personally receiving any state or federal government benefits including but not limited to Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP) (food stamps, employment and training services), Food and Nutrition Programs, SC Voucher Program, Supplemental Security Income (SSI), and Medical Assistance for the Elderly. These benefits are determined based on the poverty guidelines, including asset limitations. The applicant ~~must~~ **should be required to show the screening entity proof** ~~attach documentation~~ that he personally receives one of these benefits to be presumed indigent. **The screening entity may use discretion in determining what documentation is acceptable to prove receipt of benefits.**

c. At the time of application, the applicant is incarcerated in a local detention center ~~er. or state prison~~ and has been incarcerated for at least ten (10) consecutive days prior to application.

~~If an applicant, who is presumed indigent because of incarceration, is released from custody within sixty (60) days after being appointed counsel, he must re-apply for appointed counsel by submitting an Affidavit of Indigency and Application for Counsel form, supporting documentation, and the application fee at the screening office for the county prior to his/her First Appearance Hearing. The person must provide proof to the Court at the First Appearance Hearing that he/she re-applied and qualified for appointed counsel prior to being excused from the hearing.~~

~~If the applicant is released from custody more than sixty (60) days after being appointed counsel, the representation may continue. The applicant must be re-screened and if it is determined that he is no longer indigent, the Court must determine what the applicant must pay towards the cost of the representation.~~

3. Factors to be Considered in Determining Indigency

When determining whether an applicant is eligible for an appointed counsel, consideration should be given to the following factors:

a. Income Resources:

The financial guidelines used to assess indigency are set at 100% of the federal poverty guidelines or less. The federal poverty guidelines are published by the US Department of Health and Human Services annually. Applicants with income resources in excess of 100% of the federal poverty level will not generally qualify for indigent defense services. However, consideration must be given to any documented exceptional factors. To determine income resources, the screener must determine the applicant's total income resources and the applicant's household size. The applicant's income resources include the net income of the applicant and of those persons who are legally responsible for the applicant. Net income means gross income minus deductions required by law.

b. Sources of Income Resources

1. Money, wages and salaries minus deductions required by law
2. Income from self-employment minus deductions required by law
3. Regular payments from Social Security, veteran's benefits, training stipends, alimony, child support and military allotments or regular support from an absent family member or someone not living in the household, or foster care payments;
4. Public or private employee pensions or regular insurance or annuity payments;
5. Income from dividends, interest, rents, royalties, estates or trusts;
6. Benefits from a governmental income maintenance program (unemployment, state or county assistance, home relief)
7. Money received from the sale of real or personal property; or from tax refunds, gifts, insurance payments or compensation for injury;
8. Value of Public Assistance Benefits.

c. Who is legally responsible for the Applicant

1. A husband and wife have a mutual duty of support. Therefore, the spouse's income and assets must be considered when determining whether the applicant qualifies for appointed counsel. If there exists some reason in a specific case why the spouse's income or assets should not be considered, the applicant must state the reason on the application form and give a detailed explanation. Documentation may be required.

2. Indigency of a child under the age of 18 should be determined by the financial status of the parents (natural or adoptive) or legal guardian.

3. A parent whose rights have been terminated is not legally responsible for an applicant.

4. A step-parent is not legally responsible for an applicant.

5. Parents or other relatives who provide housing or other care for the applicant who is 18 years of age or older usually will not have a legal responsibility for the applicant.

6. Eligibility for appointed counsel for an adult under guardianship is based upon the resources of the applicant, not the resources of the guardian.

d. Household Size

1. All individuals who are dependent on the applicant for financial support should constitute a single household for purposes of determining income levels.

2. The applicant, and the applicant's spouse, and children who are the legal responsibility of the applicant are included as members of a single household. Adult children, stepchildren, grandchildren, parents, other relatives, girlfriends/boyfriends or their children, and other non-related persons who reside in the home will generally not be considered the legal responsibility of the applicant and should not be counted as part of the household for purposes of determining eligibility. In exceptional circumstances, such persons may be considered as part of the household (for example, applicant's grandchildren live with the applicant and the parents of the children are absent and not supporting the children).

3. The applicant has the burden of providing a specific reason why the income and assets of his/her spouse should not be included in the determination of the household size.

e. Non-Income Resources

1. Non-income resources include, but are not limited to, real property, line of credit, insurance proceeds, inheritances, investments, and other non-exempt property that can be liquidated to pay for the services of an attorney.

2. Absent exceptional circumstances, an applicant with equity in real and/or personal property more than \$30,000 will be NOT be considered indigent.

f. Exceptional Factors: (Factors to consider that may or may not justify a finding that an applicant is eligible for the appointment of counsel even though the applicant otherwise does not meet the eligibility criteria.)

An applicant whose income resources and/or non-income resources exceed the poverty guidelines may still be eligible to receive an appointed attorney based on the following factors:

1. Seasonal variations in income.
2. Age or physical infirmity of household member(s).
3. Extraordinary medical bills or other necessary expenses which the applicant is paying for the applicant or a household member.
4. Liquidity or non-liquidity of applicant's non-income resources.
5. Court ordered child support obligation is a large percentage of the applicant's income AND the applicant is currently paying towards the obligation.
6. Estimated cost of private attorney fees and costs with respect to the matter for which representation is sought.
7. The nature of the criminal charge (Class A or B Felony).

To consider exceptional factors, written documentation must be provided to support the exceptional factor.

F. DENIAL OF ELIGIBILITY

1. If the screening entity determines that the applicant is not indigent, a Denial Letter (Attachment C), a Request for Review form (Attachment D), and a copy of the procedure to request a review hearing must be given to an applicant. The applicant can request review of the indigency determination by the court that has jurisdiction over the case. The applicant does not have a right to request a review if a judge of the court having jurisdiction over the case made the determination decision. If the applicant's financial circumstances change, he may re-apply by submitting a new Affidavit of Indigency form.

2. A requested hearing for the Judge to review the denial of an application for indigent defense services should be held during the term of court immediately following the date of the Request for Review form. The Chief Administrative Judge, after consultation with the Circuit Solicitor, Circuit Public Defender and Clerk of Court, must develop a process for the submission of the Review forms and the scheduling of review hearings for their respective circuit. The Chief Administrative Judge must provide the process, and any changes thereafter, in writing to the Commission on Indigent Defense.

3. The judge reviewing the denial of eligibility must issue an Order that reflects the Court's decision on the Review of Indigency Determination. (Attachment E). The decision of the judge is final unless changes in circumstances occur after that decision is made.

4. The applicant is not required to submit an additional fee to have the Circuit/Family Court Judge review the decision denying indigent defense services. Similarly, if the applicant's circumstances change and he/she reapplies for appointed counsel in a case in which services were previously denied, no additional fee is required.

G. REVIEW OF DETERMINATION OF ELIGIBILITY

1. It is in the interest of all parties, the court and the public, to ensure that indigent defense services are available and provided in appropriate cases. At times, review screening is necessary to curb abuses, and to ensure that services are being provided to those who are truly indigent. The initial determination that a person is indigent is subject to review by the court with jurisdiction over the matter if it subsequently appears that the applicant is no longer indigent, has obtained counsel of his own, or for other good cause shown. ~~This review may be held at the request of the State, appointed counsel or sua sponte by the Judge.~~

2. If it is determined that the applicant is no longer indigent, the Court may enter an Order relieving appointed counsel. If the case has progressed to the point where relieving counsel from representation will have an extreme disruption on the flow of the court proceedings, representation may be continued and the Court must order the applicant to reimburse the Office of Indigent Defense the cost, or a portion thereof, of the representation.

H. SCREENING ENTITY REPORTING REQUIREMENT

The screening entity must maintain a record of (1) the number of applications submitted, (2) the number of application approved for indigent defense services (3) the number of applications denied for indigent defense services (4) the number of review hearings requested (5) the number of review hearings where the court granted the appointment of counsel (6) the number of applications where the application fee was paid and (7) the number of applications where the application fee was waived or reduced by the Court. The screening entity must provide this information to the Office of Indigent Defense on a monthly basis. The Office on Indigent Defense must notify the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee and the Chairman of the House Legislative Oversight Committee which screening entities fail to provide the monthly report.

I. APPLICABLE COUNTIES

Certain counties have been selected for the initial implementation of this regulation. After reviewing data submitted by the screening entities, the Commission may require additional counties to follow this process for indigent screening. The initial counties for implementation are: Aiken, Allendale, Chester, Clarendon, Florence, Horry, Laurens, Marlboro, ~~Richland~~ and Spartanburg.

ATTACHMENT A

RIGHT TO COUNSEL AND HOW TO APPLY FOR APPOINTED COUNSEL

You have been charged with a criminal offense or named a defendant in an abuse/neglect case. You have the right to be represented by an attorney. If you are financially unable to hire an attorney to represent you (and you meet certain guidelines), you may apply to have an attorney appointed to represent you in certain cases. To apply for appointed counsel, you must:

1. Go to the _____ office to complete the Affidavit of Indigency and Application for Appointed Counsel form. The office is located at:

2. You ~~must~~ **should** take ONE of the following documents for **each** source of income with you when you apply:

- a. Paystubs for past 30 days.
- b. Printout of any assistance any household member is or has received within the last 12-months that may be considered income. (Food Stamps, Disability, Social Security Income, unemployment, retirement.) (obtained from Agency providing assistance)
- ~~e. Printout of any child support that you either pay or receive. (obtained from Family Court)~~
- c.d.** A copy of tax returns from previous year.
- ~~e. Social Security Income report for past 12 months (obtained from the SS Administration.)~~
- ~~f. Letter from current or former employer if no longer working.~~
- ~~g. Letter from any parent, family member, friend or any other person who provides any type of support or accommodations. Letter must be signed by the person and have a copy of the person's photo ID attached.~~

3. A \$40 non-refundable application fee

To qualify to have an attorney appointed to represent you, several factors are considered to determine if you are indigent. Those factors include, but are not limited to, your income, property you may own, the number of people in your household and their income, your debts, and the US Poverty Guidelines. The Poverty Guidelines changes every year.

NOTICE: The information you provide to apply for an appointed attorney must be true and accurate. If you provide false information, your court appointed attorney may be relieved from representing you and you may be prosecuted for perjury.

ATTACHMENT B

INDIGENCY APPLICATION REVIEW CHECKLIST

STATE v. _____

Case No.: _____

Is the Application complete?

_____ Application completed and signed?

_____ Reviewed Proof of Income? (Verify documentation only if income is listed. One document per source of income required.)

_____ Paystubs for past 30 days.

_____ Printout of any assistance any household member is or has received within the last 12-months that may be considered income. (FS, Disability, SSI, unemployment, retirement.)

_____ ~~Printout of any child support that is either being paid or received.~~

_____ A copy of tax returns from previous year. (if no paystubs)

_____ ~~Social Security Income report for past 12 months~~

_____ ~~Letter from current or former employer (if no longer working).~~

_____ ~~Letter from parents, family members, friends or anyone who provides any type of support or accommodations. Letter must be signed and a copy of his/her photo ID attached.~~

No Proof of Income because: _____

_____ Application fee paid?

What is the Applicant's Household Net Annual Income? _____

What is the Applicant's Number of Household Members? _____

Does a presumption exist?

_____ Applicant's Net Income is less than or equal to Poverty Guidelines

_____ Applicant personally receives State/Federal Government Poverty Benefit(s)

_____ Applicant is currently incarcerated and has been for 10 or more consecutive days

Does Applicant have any Non-Income Assets that can be used to hiring counsel?

Are there any extraordinary factors to be considered? _____

I certify that I reviewed the Application for Counsel and am satisfied that the information contain therein is accurate.

Application Reviewed by: _____

Date: _____

Print Name: _____

ATTACHMENT C

SAMPLE DENIAL LETTER

DATE: _____

TO: _____

FROM: Screener

CASE NUMBER: _____

Your request for appointment of counsel has been denied because you do not meet the income/asset eligibility guidelines to be considered indigent.

You may request that a Circuit Court Judge review this decision. If you want the Judge to review the denial of your application, you should submit the attached Request for Review form with an explanation of why you think the decision is incorrect. A hearing will be scheduled during the next term of Court, for you to go before the Judge to review your application.

Your case will not be postponed or continued because you have filed a request for review. If you intend to file a request for review, you should do so as soon as possible.

cc: Solicitor
Public Defender

ATTACHMENT D

SAMPLE REQUEST FOR REVIEW

STATE OF SOUTH CAROLINA)	IN COURT OF GENERAL SESSIONS
)	
COUNTY OF)	
)	
STATE,)	
)	CASE NO.: _____
vs.)	
)	
_____)	REQUEST FOR REVIEW OF APPLICATION
)	FOR APPOINTED COUNSEL
_____)	

Now comes the Defendant, _____, asking the Circuit Court Judge to review the denial decision of the Affidavit of Indigency and Application for Appointment of Counsel in the above matter. The Defendant believes the decision is incorrect because: _____

WHEREFORE, the Defendant pray that the Court set a hearing to review this decision and determine if the Defendant is indigent and able to receive appointed counsel in this case.

Defendant signature

Defendant's Printed Name

Date: _____

ATTACHMENT E

SAMPLE ORDER UPON JUDGE'S REVIEW

STATE OF SOUTH CAROLINA) IN COURT OF GENERAL SESSIONS
)
COUNTY OF)

STATE,)
) CASE NO.: _____
vs.)
)
_____) ORDER UPON JUDGE'S REVIEW OF
) INDIGENCY DETERMINATION
_____))

The above-named Defendant requested a review of the denial of the Affidavit of Indigency and Application for Appointment of Counsel. Upon review of the same, and based on

the Court hereby finds that the defendant is:

_____ Not Indigent.

_____ Indigent. The Public Defender is appointed to represent the defendant in this case.

_____ Indigent but can afford to pay a portion of the cost of the indigent defense services. The Public Defender is appointed to represent the Defendant. The Defendant must reimburse the Office of Indigent Defense: _____ payable at the rate of _____ through the Clerk of Court office.

Dated this _____ day of _____, 20____

Circuit Court Judge

cc: Defendant
Solicitor
Public Defender